

**\* \* REASONS FOR AMENDMENTS AND REMARKS \* \***

Applicant wishes to acknowledge with appreciation the Examiner's analysis and efforts in examining this application. A sincere and earnest effort to respond to the Office Action has been made by Applicant. Accordingly, reconsideration and allowance of the subject claims are respectfully requested.

**I. Claim Rejections under 35 U.S.C. § 101**

The Examiner rejected Claims 1-4, 6-9 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. According to the Examiner, the "web-based interface" is "software per se." Applicant respectfully submits that the claim as a whole must be examined under § 101 and the "web-based interface" cannot be properly segregated in the analysis. In any event, Applicant has amended Claim 1 to recite the "web-based interface" as "operating on a computer." Additionally, Applicant has amended Claim 1 to note that the repository service is "computerized." Accordingly, Applicant respectfully submits that these rejections should be withdrawn.

**II. Claim Rejections under 35 U.S.C. § 103(a)**

Claims 1-4, 6-9,<sup>1</sup> 11-13, 15, 18-20, 22-26 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,737,539 ("Edelson") in view of U.S. Publication

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<sup>1</sup> The Office Action had a typographical error by indicating that claims "1-4, 4-9 ..." had been rejected. Applicant reasonably believes that the Examiner intended this to be "1-4, 6-9 ..." because Claim 5 had previously been cancelled.

No. 2003/0179287 ("Kozic"). In view of the amendments to independent Claims 1, 11 and 22, any further rejection of these claims on this basis would be respectfully traversed.

This a rejection under 35 U.S.C. § 103(a) and, therefore, the *Graham* factors<sup>2</sup> (i.e., the scope and content of the prior art, differences between the prior art and the claims at issue, and the level of ordinary skill in the pertinent art) are applicable.

**1) Scope and Content of the Prior Art.**

Edelson is a prescription creation system. The system allows a physician to create an electronic prescription at the point of care. Drugs in the list that can be prescribed are classified according to a patient condition for which the drugs are effective. See Edelson at col. 4, lns. 43-60.

Kozic is a system for providing pharmaceutical services to a plurality of remote sites from a central site. The central site includes a central video-conferencing station operable for a pharmacist to perform pharmaceutical services from within the central site. The central site is selectively coupled to the plurality of remote sites. The remote video-conferencing station is operable to provide real-time communication between a customer at one of the plurality of remote sites and the pharmacist within the central cite. See Kozic at ¶ 10.

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<sup>2</sup> *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

**2) Differences between the prior art and the claimed invention**

Claim 1

Claim 1 has been amended to include the limitations of Claim 7; accordingly, claim 7 has been cancelled without prejudice. Additionally, Claim 1 has been amended to require detection of whether the patient qualifies for a drug assistance program. Among other limitations, Claim 1 requires the banner section to include a drug assistance request template if the patient is detected as qualifying for a drug assistance program. The drug assistance request template is automatically populated with a patient's health information based on the detection by the web-based interface that the patient qualifies for a drug assistance program. Prior to the amendment to Claim 1 to include these limitations, the Examiner asserted that "the drug assistance request template reads on the Rx Options, Rx History, and Rx Info." Office Action of 3/17/2010 at 5. The amendment to Claim 1 clarifies that the drug assistance template involves more than simply populating a form. Instead, there is a detection step to determine whether the patient qualifies for the drug assistance program and the populated drug assistance request template is shown in the banner section and populated based on this detection. This is significantly different than options in which information about the patient, such as Rx Options, Rx History or Rx Info is simply presented to the physician. Based on this clarification in which the drug assistance template selectively appears in the banner section depending on whether the patient qualifies, Applicant respectfully submits that this does not read on the Rx Options, Rx History or Rx Info of Edelson. Moreover, Kozic fails to disclose this feature. Accordingly, for at least this reason, Applicant

requests withdrawal of the rejections and an indication that Claim 1 (and those claims dependent thereon) are allowed.

Claim 9

Claim 9 includes a feature in which the alert banner is configured to “display a commonly misdiagnosed illness responsive to one or more medical conditions in the patient health record section.” As discussed in the application, this type of alert banner may help avoid a misdiagnosis:

[T]he alert may be activated when one or more of the medical conditions shown for the current patient have been flagged or are otherwise being monitored by these institutions. For example, if the CDC is concerned that doctors are making misdiagnoses by confusing Severe Acute Respiratory Syndrome (SARS) with the flu, an alert may be generated whenever the flu is entered as a patient's medical condition. A doctor reviewing the alert may realize that a misdiagnosis has been made and change their prescribed treatment.

The Examiner cites Edelson at col. 22, lns. 44-54, but this merely discloses alerts for particular drugs, such as if a drug is withdrawn from the market. This is completely different than the claimed alert banner that warns a physician to a possible misdiagnosis responsive to medical conditions in the patient health record section. Even if a drug alert is made in Edelson, the diagnosis remains the same. The physician would merely change the particular drug that is being prescribed, but it would be for the same diagnosis. This stands in contrast to claim 9 in which the physician may change the diagnosis based on the information in the alert banner. There is a significant difference between an alert about a drug warning and an alert based on a patient's

specific condition(s) in the patient health record section that might prevent a misdiagnosis. Accordingly, for at least these reasons, Applicant requests that this rejection be withdrawn.

Claim 11

Applicant has amended Claim 11 to clarify that the communications session is with a selected drug provider from a plurality of drug providers at a network address associated with the selected drug provider based on prescription information in the patient health record section. The Examiner acknowledges that “Edelson does not specifically disclose the communication session being an interactive communication portal session.” Office Action of 3/17/2010 at 7. The Examiner asserted that Kozic discloses an interactive communication session with a drug provider. However, even assuming *arguendo* that one desired to combine Edelson and Kozic, the combination would still not teach all the limitations of Claim 11. Kozic discloses a central pharmacist from which the remote locations connect. A central pharmacist inherently requires all remote locations connect to the same location. This stands in contrast to the limitations of Claim 11 in which there are a plurality of drug providers and there is a connection at the address of a selected drug provider. Accordingly, for at least this reason, Applicant requests withdrawal of the rejections and an indication that Claim 11 (and those claims dependent thereon) are allowed.

Claim 20

Among other limitations, Claim 20 requires the step of “detecting whether the selected patient qualifies for a drug assistance program, wherein the banner includes a drug assistance application responsive to the detecting step.” As discussed above with respect to Claim 1, neither Edelson nor Kozić disclose the detection of patient qualifications for a drug assistance program. Accordingly, for at least this reason, Applicant requests withdrawal of the rejections and an indication that Claim 20 (and those claims dependent thereon) are allowed.

V. Conclusion

If upon consideration of the above the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact Applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. To the extent additional fees are required, please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-1010 (26880/100961) and please credit any excess fees to such deposit account.

Respectfully submitted,

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